

# **EXHIBIT A**

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15 Attorneys for Defendant,

16 AVX CORPORATION

17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA

19 SAN FRANCISCO DIVISION

20 IN RE CAPACITORS ANTITRUST  
21 LITIGATION

Case No. 3:14-cv-03264-JD

22 THIS DOCUMENT RELATES TO:

23 AVX CORPORATION

**OBJECTIONS AND RESPONSES  
OF DEFENDANT AVX  
CORPORATION TO PLAINTIFFS'  
SECOND SET OF  
INTERROGATORIES**

24 Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant AVX  
25 Corporation ("AVX") hereby objects and responds to Direct Purchaser Plaintiffs' Second Set of  
26 Interrogatories (the "Interrogatories" collectively, or "Interrogatory" individually) as follows:

**OBJECTIONS TO EACH AND EVERY REQUEST**

27 AVX incorporates by reference its Objections to Each and Every Request set forth in its  
28 Responses to Plaintiffs' First Set of Interrogatories. Without waiving, and expressly subject to  
the foregoing objections to each and every request, AVX responds as follows:

1                                   **SPECIFIC OBJECTIONS AND RESPONSES**

2   **INTERROGATORY NO. 10**

3           If You contend that any of Your sales of Capacitors that You manufactured outside the  
4   United States to United States purchasers for delivery in the United States do not qualify as  
5   “import trade” or “import commerce” pursuant to the terms of the FTAIA, identify those sales or  
6   categories of sales and state all facts and legal theories in support of Your contention.

7   **RESPONSE TO INTERROGATORY NO. 10**

8           AVX specifically objects to Interrogatory No. 10 on the grounds that it is overly broad,  
9   vague, ambiguous and unduly burdensome. AVX further objects to this Interrogatory to the  
10   extent it calls for a legal conclusion and/or seeks information protected by the attorney-client  
11   privilege, the work-product doctrine, or any other privilege or doctrine. In particular, AVX  
12   objects to this Interrogatory on the grounds that it is a premature contention interrogatory that  
13   seeks attorney work product in the form of legal theories and contentions relating to Defendants’  
14   arguments regarding the FTAIA. These issues will be addressed in the parties’ forthcoming  
15   FTAIA motions for summary judgment and responses thereto. This Interrogatory also purports  
16   to improperly shift the burden of proof on FTAIA issues to AVX. Plaintiffs should identify the  
17   sales they contend are at issue; after they have done so, AVX can respond with regard to those  
18   sales or categories of sales AVX contends are barred by the FTAIA.

19           Subject to and without waiving the foregoing objections, AVX respond as follows: AVX  
20   has agreed to produce transactional data pursuant to Plaintiffs’ first set of document requests.  
21   After Plaintiffs have set forth the nature of the sales for which they seek to recover, AVX is  
22   willing to further meet and confer regarding this Interrogatory.

23  
24   **INTERROGATORY NO. 11**

25           If You contend that any of Your sales of Capacitors outside the United States to a foreign  
26   subsidiary or foreign agent of a United States company for delivery in the United States do not  
27

1 qualify as “import trade” or “import commerce” pursuant to the terms of the FTAIA, identify  
2 those sales or categories of sales and state all facts and legal theories in support of Your  
3 contention.

4 **RESPONSE TO INTERROGATORY NO. 11**

5 AVX specifically objects to Interrogatory No. 10 on the grounds that it is overly broad,  
6 vague, ambiguous and unduly burdensome. AVX further objects to this Interrogatory to the  
7 extent it calls for a legal conclusion and/or seeks information protected by the attorney-client  
8 privilege, the work-product doctrine, or any other privilege or doctrine. In particular, AVX  
9 objects to this Interrogatory on the grounds that it is a premature contention interrogatory that  
10 seeks attorney work product in the form of legal theories and contentions relating to Defendants’  
11 arguments regarding the FTAIA. These issues will be addressed in the parties’ forthcoming  
12 FTAIA motions for summary judgment and responses thereto. This Interrogatory also purports  
13 to improperly shift the burden of proof on FTAIA issues to AVX. Plaintiffs should identify the  
14 sales they contend are at issue; after they have done so, AVX can respond with regard to those  
15 sales or categories of sales AVX contends are barred by the FTAIA.

16 Subject to and without waiving the foregoing objections, AVX respond as follows: AVX  
17 has agreed to produce transactional data pursuant to Plaintiffs’ first set of document requests.  
18 After Plaintiffs have set forth the nature of the sales for which they seek to recover, AVX is  
19 willing to further meet and confer regarding this Interrogatory.

20  
21 **INTERROGATORY NO. 12**

22 If You contend that any of Your sales of Capacitors to purchasers located in the United  
23 States for delivery to persons located outside of the United States are outside the scope of  
24 coverage of United States antitrust law pursuant to the terms of the FTAIA, whether because  
25 they do not qualify as “import trade” or “import commerce” or because they did not have a  
26 substantial direct and foreseeable effect on United States commerce or for any other reason,  
27

1 identify those sales or categories of sales and state all facts and legal theories in support of Your  
2 contention.

3 **RESPONSE TO INTERROGATORY NO. 12**

4 AVX specifically objects to Interrogatory No. 10 on the grounds that it is overly broad,  
5 vague, ambiguous and unduly burdensome. AVX further objects to this Interrogatory to the  
6 extent it calls for a legal conclusion and/or seeks information protected by the attorney-client  
7 privilege, the work-product doctrine, or any other privilege or doctrine. In particular, AVX  
8 objects to this Interrogatory on the grounds that it is a premature contention interrogatory that  
9 seeks attorney work product in the form of legal theories and contentions relating to Defendants'  
10 arguments regarding the FTAIA. These issues will be addressed in the parties' forthcoming  
11 FTAIA motions for summary judgment and responses thereto. This Interrogatory also purports  
12 to improperly shift the burden of proof on FTAIA issues to AVX. Plaintiffs should identify the  
13 sales they contend are at issue; after they have done so, AVX can respond with regard to those  
14 sales or categories of sales AVX contends are barred by the FTAIA.

15 Subject to and without waiving the foregoing objections, AVX respond as follows: AVX  
16 has agreed to produce transactional data pursuant to Plaintiffs' first set of document requests.  
17 After Plaintiffs have set forth the nature of the sales for which they seek to recover, AVX is  
18 willing to further meet and confer regarding this Interrogatory.

19  
20 **INTERROGATORY NO. 13**

21 If You contend that any of Your sales of Capacitors to persons located outside the United  
22 States (including foreign subsidiaries or foreign agents of United States companies) that were  
23 delivered to persons located outside the United States for incorporation into products that were  
24 sold in the United States are outside the scope of United States antitrust law pursuant to the terms  
25 of the FTAIA, whether because they do not qualify as "import trade" or "import commerce" or  
26 because they did not have a substantial direct and foreseeable effect on United States commerce  
27

1 or for any other reason, identify those sales and state all facts and legal theories in support of  
2 Your contention.

3 **RESPONSE TO INTERROGATORY NO. 13**

4 AVX specifically objects to Interrogatory No. 10 on the grounds that it is overly broad,  
5 vague, ambiguous and unduly burdensome. AVX further objects to this Interrogatory to the  
6 extent it calls for a legal conclusion and/or seeks information protected by the attorney-client  
7 privilege, the work-product doctrine, or any other privilege or doctrine. In particular, AVX  
8 objects to this Interrogatory on the grounds that it is a premature contention interrogatory that  
9 seeks attorney work product in the form of legal theories and contentions relating to Defendants'  
10 arguments regarding the FTAIA. These issues will be addressed in the parties' forthcoming  
11 FTAIA motions for summary judgment and responses thereto. This Interrogatory also purports  
12 to improperly shift the burden of proof on FTAIA issues to AVX. Plaintiffs should identify the  
13 sales they contend are at issue; after they have done so, AVX can respond with regard to those  
14 sales or categories of sales AVX contends are barred by the FTAIA.

15 Subject to and without waiving the foregoing objections, AVX respond as follows: AVX  
16 has agreed to produce transactional data pursuant to Plaintiffs' first set of document requests.  
17 After Plaintiffs have set forth the nature of the sales for which they seek to recover, AVX is  
18 willing to further meet and confer regarding this Interrogatory.

19  
20 **INTERROGATORY NO. 14**

21 If you contend that the FTAIA prevents any Class Member from stating a claim that he,  
22 she or it would otherwise be able to state under United States antitrust law with respect to any  
23 Capacitors that Class Member purchased, identify each such purchase or category of purchase  
24 and state all facts and legal theories in support of your contention.

**RESPONSE TO INTERROGATORY NO. 14**

AVX specifically objects to Interrogatory No. 10 on the grounds that it is overly broad, vague, ambiguous and unduly burdensome. AVX further objects to this Interrogatory to the extent it calls for a legal conclusion and/or seeks information protected by the attorney-client privilege, the work-product doctrine, or any other privilege or doctrine. In particular, AVX objects to this Interrogatory on the grounds that it is a premature contention interrogatory that seeks attorney work product in the form of legal theories and contentions relating to Defendants' arguments regarding the FTAIA. These issues will be addressed in the parties' forthcoming FTAIA motions for summary judgment and responses thereto. This Interrogatory also purports to improperly shift the burden of proof on FTAIA issues to AVX. Plaintiffs should identify the sales they contend are at issue; after they have done so, AVX can respond with regard to those sales or categories of sales AVX contends are barred by the FTAIA.

Subject to and without waiving the foregoing objections, AVX respond as follows: AVX has agreed to produce transactional data pursuant to Plaintiffs' first set of document requests. After Plaintiffs have set forth the nature of the sales for which they seek to recover, AVX is willing to further meet and confer regarding this Interrogatory.

**INTERROGATORY NO. 15**

If Your response to any of Direct Purchaser Plaintiffs' Requests for Admissions Nos. 1 through 4 is anything other than an unqualified admission, state your reasons therefor and all bases for your response.

**RESPONSE TO INTERROGATORY NO. 15**

AVX incorporates by reference its general and specific objections to Plaintiffs' Request for Admissions Nos. 1, 2, 3, and 4. AVX also objects to this Interrogatory on the grounds that it is duplicative of information sought through other means.

1 Subject to and without waiving the foregoing objections, AVX responds as follows:  
2 AVX denied Requests for Admission Nos. 2 and 3. In doing so, AVX stated that it was unable  
3 to admit or deny the Requests on the basis that the information AVX currently knows or can  
4 readily obtain is insufficient to enable it to admit or deny the Request.

5  
6 Dated: March 30, 2015

MINTZ, LEVIN, COHN, FERRIS,  
GLOVSKY AND POPEO, P.C.

7  
8 By: /s/ Bruce D. Sokler  
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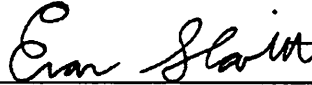
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18 *Attorneys for Defendant AVX Corporation*  
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27



**VERIFICATION**

Signed under the pains and penalties of perjury, this 25th day of March, 2015.

A handwritten signature in cursive script, appearing to read "Evan Slavitt", is written over a horizontal line.

Evan Slavitt on behalf of AVX CORPORATION  
and not individually.

1 Scott M. Mendel (*pro hac vice*)  
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11

12 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO DIVISION**

14 IN RE CAPACITORS ANTITRUST  
LITIGATION

Case No. 3:14-cv-03264-JD

15  
16 This Document Relates to:  
17 DIRECT PURCHASER ACTIONS  
18

**OBJECTIONS AND RESPONSES OF  
DEFENDANTS NICHICON  
CORPORATION, NICHICON (AMERICA)  
CORPORATION, AND FPCAP  
ELECTRONICS (SUZHOU) CO., LTD. TO  
DIRECT PURCHASER PLAINTIFFS'  
SECOND SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendants Nichicon Corporation, Nichicon (America) Corporation, and FPCAP Electronics (Suzhou) Co., Ltd. (collectively, "Nichicon") hereby respond and object to the Direct Purchaser Plaintiffs' First Set of Interrogatories (the "Interrogatories" collectively, or "Interrogatory" individually), served by the Direct Purchaser Plaintiffs ("the Plaintiffs") on February 25, 2015, as follows.

The following objections and responses are based upon the information currently known and available to Nichicon. Discovery is in the preliminary stages and is ongoing, and may disclose the existence of additional facts or documents, add meaning to known facts or documents, or lead to additions, variations, or changes to these objections and responses. Without obligating itself to do so, except to the extent required under the Federal Rules of Civil Procedure, Nichicon reserves the right to amend or supplement the responses as additional information is discovered, revealed, recalled, or otherwise ascertained, and as further analysis, research, investigation, and discovery disclose additional facts and documents.

#### **GENERAL OBJECTIONS**

1. Nichicon asserts the General Responses and Objections with respect to each and every Interrogatory, Instruction, and Definition contained in the Interrogatories.

2. Nichicon objects to the scope of the Interrogatories to the extent they are vague, overbroad, ambiguous, or seek material which neither pertains to the allegations in this lawsuit nor is reasonably calculated to lead to the discovery of admissible evidence.

3. Nichicon objects to the scope of the Interrogatories to the extent that they violate the Court's Order on October 29, 2014 staying discovery until April 15, 2015 by seeking discovery beyond the scope of the Court's January 14, 2015 Order. *See* ECF Nos. 309, 514.

4. Nichicon objects to the Interrogatories' Definitions, Instructions, and Interrogatories to the extent they purport to impose burdens on Nichicon exceeding the scope of the Federal Rules of Civil Procedure, the Local Rules of Practice in Civil Proceedings before the United States District Court for the Northern District of California ("N.D. Cal. Local Rules"), the Standing Orders of the presiding judge, or other applicable domestic or foreign laws or rules, including but not limited to

1 privacy laws, and/or what the parties have agreed to or will agree to with regards to an electronically  
2 stored information (“ESI”) protocol, protective order, privilege agreement, and expert stipulation.

3 5. Nichicon objects to the Interrogatories’ Definitions, Instructions, and Interrogatories  
4 as unduly burdensome and oppressive to the extent that they purport to require Nichicon to search  
5 facilities and files and/or interview employees other than those facilities and files and/or employees  
6 that would reasonably be expected to have responsive information. Subject to its objections,  
7 Nichicon’s responses will be based upon (1) a reasonable search of facilities and files that could  
8 reasonably be expected to possess responsive information, and (2) interviews of Nichicon employees  
9 and/or representatives who could reasonably be expected to possess responsive information.

10 6. Nichicon objects to the Interrogatories as premature to the extent that they seek  
11 information related to opinion testimony or to expert discovery.

12 7. Nichicon objects to the Interrogatories to the extent they seek information in the  
13 possession, custody, or control of any entity other than Nichicon on the grounds that any such request  
14 is overbroad and unduly burdensome. Nichicon further objects to the Interrogatories to the extent  
15 that they request information in violation of a legal or contractual obligation of non-disclosure to a  
16 third party. Nichicon will not provide such information without the consent of the relevant third  
17 party or a court order compelling production.

18 8. Nichicon objects to the Interrogatories to the extent they seek disclosure of  
19 information protected from discovery by the attorney-client privilege, the work product doctrine, or  
20 any other applicable privilege or exemption (collectively, “privileged information”). Nichicon will  
21 not produce any privileged information. The production of any privileged information is  
22 unintentional, and Nichicon does not intend to waive any applicable privilege or objection through  
23 such production. Nichicon reserves the right to correct the record with regard to any such  
24 unintentional production.

25 9. Nichicon’s decision to provide information notwithstanding the objectionable nature  
26 of any definition or instruction, or the Interrogatories themselves, should not be construed as: (a) an  
27 admission that the material is relevant; (b) a waiver of the General Responses and Objections or the  
28 objections asserted in response to the specific Interrogatory; or (c) an agreement that requests for

1 similar information will be treated in a similar manner. All information produced by Nichicon shall  
 2 be governed under the terms of the Stipulated Protective Order that has been entered by the Court and  
 3 any subsequent amendments to the Stipulated Protective Order. *See* ECF Nos. 554, 563.

4 10. Nichicon objects to the Interrogatories' Definitions, Instructions, and Interrogatories to  
 5 the extent they purport to require Nichicon to provide information that is equally available to  
 6 Plaintiffs, on the grounds that providing such information would be unduly burdensome. This  
 7 objection applies, particularly, to information that is publicly available and/or information that is  
 8 already in Plaintiffs' possession.

9 11. Nichicon objects to the Interrogatories' Definitions, Instructions, and Interrogatories to  
 10 the extent they seek information that is not reasonably accessible by Nichicon because of undue  
 11 burden or cost.

12 12. Nichicon objects to the Interrogatories to the extent they exceed the number of  
 13 interrogatories, including discrete sub-parts, allowed by Fed. R. Civ. P. 33(a)(1), or as agreed to by  
 14 the parties.

#### 15 **OBJECTIONS TO DEFINITIONS**

16 13. Nichicon objects that the purported definitions of "All," "Any," "And," "Or," and  
 17 "Including," are overbroad, vague, and ambiguous. Without waiving this objection, and subject to all  
 18 other applicable objections or privileges stated herein, to the extent Nichicon provides information or  
 19 documents in response to any Interrogatory using these terms, Nichicon shall provide such  
 20 information or documents that expressly reflect or refer on their face to information relevant to the  
 21 specified subject matter or otherwise reasonably relate to the specified subject matter.

22 14. Nichicon objects to the definition of the term "Identify" as defined in Definitions 10  
 23 through 12 as irrelevant, unduly burdensome, and overbroad. Nichicon further objects to the  
 24 definition of the term "Identify" as defined in Definitions 10-12 as an interrogatory improperly posed  
 25 in the form of a definition. Nichicon also objects to the definition of the term "Identify" to the extent  
 26 that, by virtue of the definition, any request including this term is compound and includes several  
 27 distinct subparts that should be the subject of separate interrogatories.  
 28

15 OBJECTIONS TO INSTRUCTIONS

18. Nichicon objects to the unlimited geographic scope of the Interrogatories as rendering every specific interrogatory to which it purports to apply overbroad and unduly burdensome. The use of an unlimited geographic scope would permit Plaintiffs to indiscriminately request that Nichicon provide information relating to every state, country, and region in which Nichicon operates with no justification for imposing such a burden or explanation of why such a request cannot be more narrowly drafted.

20. Nichicon objects to Instruction 8 as an interrogatory improperly posed in the form of an instruction. Nichicon also objects to Instruction 8 to the extent that it imposes obligations beyond what is required under Rule 33 of the Federal Rules of Civil Procedure.

21. The Objections and Responses below shall not be construed as an admission of or agreement with any implication, statement, characterization or conclusions implied or stated in any Definition, Instruction, or Interrogatory. The fact that Nichicon may answer part or all of any Interrogatory is not intended to be, and shall not construed to be, a waiver by Nichicon of any part of any objection to the Interrogatory.

22. Nichicon reserves the right to assert additional general and specific objections to the production of information and/or documents as appropriate and to supplement these objections and responses. Nichicon also reserves the right to assert additional general and specific objections arising from matters discovered during the course of the litigation.

8 23. Nichicon adopts and incorporates by reference, to the extent applicable, any and all  
9 objections, specific or general, asserted by any other Defendant in its responses to these  
0 Interrogatories.

24. The General Objections, Objections to Definitions, and Objections to Instructions are incorporated by reference into each and every specific objection and response below. The fact that an answer is given or a document is provided does not waive any general or specific objection.

In addition to the foregoing General Responses and Objections, set forth below are Nichicon's responses and further objections to each individual Interrogatory set forth in the Interrogatories. Each General Response and Objection is incorporated into each of the responses to the individual Interrogatory. Without waiving any of the foregoing General Responses and Objections, Nichicon



1 responds as follows:

2 **INTERROGATORIES**

3 **INTERROGATORY NO. 10:**

4 If You contend that any of Your sales of Capacitors that You manufactured outside the United  
5 States to United States purchasers for delivery in the United States do not qualify as “import trade” or  
6 “import commerce” pursuant to the terms of the FTAIA, identify those sales or categories of sales  
7 and state all facts and legal theories in support of Your contention.

8 **RESPONSE:**

9 In addition to and without waiving its General Responses and Objections, Nichicon objects to  
10 this Interrogatory to the extent that it seeks information concerning events outside the Relevant Time  
11 Period, as that term is interpreted above, on the grounds that it seeks information that is neither  
12 relevant to any claims or defenses in this litigation nor reasonably calculated to lead to the discovery  
13 of admissible evidence. Nichicon specifically objects to the term “United States purchasers” as  
14 vague, ambiguous, overly broad, and undefined. Additionally, Nichicon objects to this Interrogatory  
15 on the grounds that it is a premature contention interrogatory. Such a contention interrogatory, if  
16 proper at all, should await the substantial completion of discovery. Fed. R. Civ. P. 33(a)(2); *HTC*  
17 *Corp. v. Technology Properties Ltd.*, No. C08-00882 JF (HRL), 2011 WL 97787 at \*1-2 (N.D. Cal.  
18 Jan. 21, 2011); *In re Convergent Technologies Securities Litigation*, 108 F.R.D. 328 (N.D. Cal.  
19 1985). Moreover, this contention interrogatory seeks Nichicon’s legal theories at a time when the  
20 parties are in the process of preparing motions and responses thereto on the very subject matter to  
21 which this Interrogatory is directed. Plaintiffs will receive Nichicon’s legal theories on the subject  
22 matter to which this Interrogatory is directed at the time Nichicon’s briefing is filed. Nichicon also  
23 objects to this Interrogatory on the grounds that it impermissibly seeks to shift to Nichicon the burden  
24 that Plaintiffs bear to prove their own claims. Additionally, Nichicon objects to this Interrogatory to  
25 the extent it calls for a legal conclusion, seeks Nichicon’s “legal theories,” or seeks any other  
26 information protected by any applicable privilege, including without limitation: attorney-client  
27 privilege, the work-product doctrine, the joint defense privilege, the common interest privilege,  
28 and/or any other applicable privilege or doctrine. Nichicon objects to this Interrogatory to the extent



1 it seeks information that is the subject of expert opinion. Nichicon will disclose such information  
2 only at the appropriate time pursuant to the Court's schedule or agreement of the parties.

3 **INTERROGATORY NO. 11:**

4 If You contend that any of Your sales of Capacitors outside the United States to a foreign  
5 subsidiary or foreign agent of a United States company for delivery in the United States do not  
6 qualify as "import trade" or "import commerce" pursuant to the terms of the FTAIA, identify those  
7 sales or categories of sales and state all facts and legal theories in support of Your contention.

8 **RESPONSE:**

9 In addition to and without waiving its General Responses and Objections, Nichicon objects to  
10 this Interrogatory to the extent that it seeks information concerning events outside the Relevant Time  
11 Period, as that term is interpreted above, on the grounds that it seeks information that is neither  
12 relevant to any claims or defenses in this litigation nor reasonably calculated to lead to the discovery  
13 of admissible evidence. Nichicon specifically objects to the term "United States company" as vague,  
14 ambiguous, overly broad, and undefined. Additionally, Nichicon objects to this Interrogatory on the  
15 grounds that it is a premature contention interrogatory. Such a contention interrogatory, if proper at  
16 all, should await the substantial completion of discovery. Fed. R. Civ. P. 33(a)(2); *HTC Corp. v.*  
17 *Technology Properties Ltd.*, No. C08-00882 JF (HRL), 2011 WL 97787 at \*1-2 (N.D. Cal. Jan. 21,  
18 2011); *In re Convergent Technologies Securities Litigation*, 108 F.R.D. 328 (N.D. Cal. 1985).  
19 Moreover, this contention interrogatory seeks Nichicon's legal theories at a time when the parties are  
20 in the process of preparing motions and responses thereto on the very subject matter to which this  
21 Interrogatory is directed. Plaintiffs will receive Nichicon's legal theories on the subject matter to  
22 which this Interrogatory is directed at the time Nichicon's briefing is filed. Nichicon also objects to  
23 this Interrogatory on the grounds that it impermissibly seeks to shift to Nichicon the burden that  
24 Plaintiffs bear to prove their own claims. Additionally, Nichicon objects to this Interrogatory to the  
25 extent it calls for a legal conclusion, seeks Nichicon's "legal theories," or seeks any other information  
26 protected by any applicable privilege, including without limitation: attorney-client privilege, the  
27 work-product doctrine, the joint defense privilege, the common interest privilege, and/or any other  
28 applicable privilege or doctrine. Nichicon objects to this Interrogatory to the extent it seeks

information that is the subject of expert opinion. Nichicon will disclose such information only at the appropriate time pursuant to the Court's schedule or agreement of the parties.

**INTERROGATORY NO. 12:**

If You contend that any of Your sales of Capacitors to purchasers located in the United States for delivery to persons located outside of the United States are outside the scope of coverage of United States antitrust law pursuant to the terms of the FTAIA, whether because they do not qualify as "import trade" or "import commerce" or because they did not have a substantial direct and foreseeable effect on United States commerce or for any other reason, identify those sales or categories of sales and state all facts and legal theories in support of Your contention.

**RESPONSE:**

In addition to and without waiving its General Responses and Objections, Nichicon objects to this Interrogatory to the extent that it seeks information concerning events outside the Relevant Time Period, as that term is interpreted above, on the grounds that it seeks information that is neither relevant to any claims or defenses in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Nichicon objects to this Interrogatory on the grounds that it is a premature contention interrogatory. Such a contention interrogatory, if proper at all, should await the substantial completion of discovery. Fed. R. Civ. P. 33(a)(2); *HTC Corp. v. Technology Properties Ltd.*, No. C08-00882 JF (HRL), 2011 WL 97787 at \*1-2 (N.D. Cal. Jan. 21, 2011); *In re Convergent Technologies Securities Litigation*, 108 F.R.D. 328 (N.D. Cal. 1985). Moreover, this contention interrogatory seeks Nichicon's legal theories at a time when the parties are in the process of preparing motions and responses thereto on the very subject matter to which this Interrogatory is directed. Plaintiffs will receive Nichicon's legal theories on the subject matter to which this Interrogatory is directed at the time Nichicon's briefing is filed. Nichicon also objects to this Interrogatory on the grounds that it impermissibly seeks to shift to Nichicon the burden that Plaintiffs bear to prove their own claims. Additionally, Nichicon objects to this Interrogatory to the extent it calls for a legal conclusion, seeks Nichicon's "legal theories," or seeks any other information protected by any applicable privilege, including without limitation: attorney-client privilege, the work-product doctrine, the joint defense privilege, the common interest privilege, and/or any other applicable

1 privilege or doctrine. Nichicon objects to this Interrogatory to the extent it seeks information that is  
 2 the subject of expert opinion. Nichicon will disclose such information only at the appropriate time  
 3 pursuant to the Court's schedule or agreement of the parties.

4 **INTERROGATORY NO. 13:**

5 If You contend that any of Your sales of Capacitors to persons located outside the United  
 6 States (including foreign subsidiaries or foreign agents of United States companies) that were  
 7 delivered to persons located outside the United States for incorporation into products that were sold  
 8 in the United States are outside the scope of United States antitrust law pursuant to the terms of the  
 9 FTAIA, whether because they do not qualify as "import trade" or "import commerce" or because  
 10 they did not have a substantial direct and foreseeable effect on United States commerce or for any  
 11 other reason, identify those sales and state all facts and legal theories in support of Your contention.

12 **RESPONSE:**

13 In addition to and without waiving its General Responses and Objections, Nichicon objects to  
 14 this Interrogatory to the extent that it seeks information concerning events outside the Relevant Time  
 15 Period, as that term is interpreted above, on the grounds that it seeks information that is neither  
 16 relevant to any claims or defenses in this litigation nor reasonably calculated to lead to the discovery  
 17 of admissible evidence. Nichicon specifically objects to the term "United States companies" as  
 18 vague, ambiguous, overly broad, and undefined. Additionally, Nichicon objects to this Interrogatory  
 19 on the grounds that it is a premature contention interrogatory. Such a contention interrogatory, if  
 20 proper at all, should await the substantial completion of discovery. Fed. R. Civ. P. 33(a)(2); *HTC*  
 21 *Corp. v. Technology Properties Ltd.*, No. C08-00882 JF (HRL), 2011 WL 97787 at \*1-2 (N.D. Cal.  
 22 Jan. 21, 2011); *In re Convergent Technologies Securities Litigation*, 108 F.R.D. 328 (N.D. Cal.  
 23 1985). Moreover, this contention interrogatory seeks Nichicon's legal theories at a time when the  
 24 parties are in the process of preparing motions and responses thereto on the very subject matter to  
 25 which this Interrogatory is directed. Plaintiffs will receive Nichicon's legal theories on the subject  
 26 matter to which this Interrogatory is directed at the time Nichicon's briefing is filed. Nichicon also  
 27 objects to this Interrogatory on the grounds that it impermissibly seeks to shift to Nichicon the burden  
 28 that Plaintiffs bear to prove their own claims. Additionally, Nichicon objects to this Interrogatory to

the extent it calls for a legal conclusion, seeks Nichicon's "legal theories," or seeks any other information protected by any applicable privilege, including without limitation: attorney-client privilege, the work-product doctrine, the joint defense privilege, the common interest privilege, and/or any other applicable privilege or doctrine. Nichicon objects to this Interrogatory to the extent it seeks information that is the subject of expert opinion. Nichicon will disclose such information only at the appropriate time pursuant to the Court's schedule or agreement of the parties.

**INTERROGATORY NO. 14:**

If you contend that the FTAIA prevents any Class Member from stating a claim that he, she or it would otherwise be able to state under United States antitrust law with respect to any Capacitors that Class Member purchased, identify each such purchase or category of purchase and state all facts and legal theories in support of your contention.

**RESPONSE:**

In addition to and without waiving its General Responses and Objections, Nichicon objects to this Interrogatory to the extent that it seeks information concerning events outside the Relevant Time Period, as that term is interpreted above, on the grounds that it seeks information that is neither relevant to any claims or defenses in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Nichicon further objects to this Interrogatory to the extent that it seeks information outside of its possession, custody, or control. Nichicon objects to this Interrogatory on the grounds that it is a premature contention interrogatory. Such a contention interrogatory, if proper at all, should await the substantial completion of discovery. Fed. R. Civ. P. 33(a)(2); *HTC Corp. v. Technology Properties Ltd.*, No. C08-00882 JF (HRL), 2011 WL 97787 at \*1-2 (N.D. Cal. Jan. 21, 2011); *In re Convergent Technologies Securities Litigation*, 108 F.R.D. 328 (N.D. Cal. 1985). Moreover, this contention interrogatory seeks Nichicon's legal theories at a time when the parties are in the process of preparing motions and responses thereto on the very subject matter to which this Interrogatory is directed. Plaintiffs will receive Nichicon's legal theories on the subject matter to which this Interrogatory is directed at the time Nichicon's briefing is filed. Nichicon also objects to this Interrogatory on the grounds that it impermissibly seeks to shift to Nichicon the burden that Plaintiffs bear to prove their own claims. Additionally, Nichicon objects to this Interrogatory to the

1 extent it calls for a legal conclusion, seeks Nichicon's "legal theories," or seeks any other information  
 2 protected by any applicable privilege, including without limitation: attorney-client privilege, the  
 3 work-product doctrine, the joint defense privilege, the common interest privilege, and/or any other  
 4 applicable privilege or doctrine. Nichicon objects to this Interrogatory to the extent it seeks  
 5 information that is the subject of expert opinion. Nichicon will disclose such information in its  
 6 possession, custody, or control only at the appropriate time pursuant to the Court's schedule or  
 7 agreement of the parties.

8 **INTERROGATORY NO. 15:**

9 If Your response to any of Direct Purchaser Plaintiffs' Requests for Admissions Nos. 1  
 10 through 4 is anything other than an unqualified admission, state your reasons therefor and all bases  
 11 for your response.

12 **RESPONSE:**

13 In addition to and without waiving its General Responses and Objections, Nichicon objects to  
 14 this Interrogatory on the grounds that it is overbroad and unduly burdensome. Nichicon further  
 15 objects to this Interrogatory to the extent it seeks privileged information, including without limitation  
 16 information subject to the attorney-client privilege, common-interest privilege, work-product  
 17 doctrine, joint defense privilege, and/or any other privilege or immunity. Further, Nichicon objects to  
 18 this Interrogatory on the grounds that it is duplicative of information sought through other means,  
 19 including information provided in Nichicon's responses to Direct Purchaser Plaintiffs' Requests for  
 20 Admissions Nos. (1)-(4).

21 Subject to and without waiver of the foregoing specific and general objections, Nichicon  
 22 responds that information relating to Nichicon's bases and reasons for responding to any of the Direct  
 23 Purchaser Plaintiffs' Requests for Admissions in any way except an unqualified admission may be  
 24 derived from an inspection of Nichicon's responses to the Direct Purchaser Plaintiffs' Requests for  
 25 Admissions Nos. (1)-(4).

26  
 27 DATED: March 30, 2015

28 By: /s/ Scott M. Mendel  
 Scott M. Mendel (*pro hac vice*)  
 Steven M. Kowal (*pro hac vice*)

12

**VERIFICATION TO FOLLOW**

Michael E. Martinez (*pro hac vice*)  
Lauren N. Norris (*pro hac vice*)  
Lauren B. Salins (*pro hac vice*)  
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*Counsel for Defendants*  
*Nichicon Corporation*  
*Nichicon (America) Corporation*  
*FPCAP Electronics (Suzhou) Co., Ltd.*

**CERTIFICATE OF SERVICE**

I am employed in Cook County in the City of Chicago. I am over the age of eighteen and not a party to the within action. My business address is 70 West Madison Street, Suite 3100, Chicago, IL 60602.

On March 30, 2015, I served a copy of the below-listed document described as:

**OBJECTIONS AND RESPONSES OF DEFENDANTS NICHICON CORPORATION, NICHICON (AMERICA) CORPORATION, AND FPCAP ELECTRONICS (SUZHOU) CO., LTD. TO DIRECT PURCHASER PLAINTIFFS' SECOND SET OF INTERROGATORIES**

BY EMAIL: I caused the document(s) to be served electronically on the persons at the electronic notification addresses listed below.

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*Counsel for Indirect Purchaser Plaintiffs*

*Also served via email on counsel for all Defendants*

I certify under penalty of perjury that the foregoing is true and correct.

Dated: March 30, 2015

By: /s/ Scott M. Mendel  
Scott M. Mendel



Scott M. Mendel (*pro hac vice*)  
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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION**

**IN RE CAPACITORS ANTITRUST  
 LITIGATION**

Master File No. 14-cv-03264-JD

**THIS DOCUMENTS RELATES TO:**

**INDIRECT PURCHASER ACTIONS**

**RESPONSE OF NICHICON CORPORATION  
 AND NICHICON (AMERICA)  
 CORPORATION TO INDIRECT  
 PURCHASER PLAINTIFFS' FIRST SET OF  
 INTERROGATORIES**



Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendants Nichicon Corporation and Nichicon (America) Corporation (collectively, "Nichicon") hereby respond and object to the Indirect Purchaser Plaintiffs' First Set of Interrogatories (the "Interrogatories" collectively, or "Interrogatory" individually), served by the Indirect Purchaser Plaintiffs ("the Plaintiffs") on February 25, 2015, as follows.

The following objections and responses are based upon the information currently known and available to Nichicon. Discovery is in the preliminary stages and is ongoing, and may disclose the existence of additional facts or documents, add meaning to known facts or documents, or lead to additions, variations, or changes to these objections and responses. Without obligating itself to do so, except to the extent required under the Federal Rules of Civil Procedure, Nichicon reserves the right to amend or supplement the responses as additional information is discovered, revealed, recalled, or otherwise ascertained, and as further analysis, research, investigation, and discovery disclose additional facts and documents.

#### **GENERAL OBJECTIONS**

1. Nichicon asserts the General Responses and Objections with respect to each and every Interrogatory, Instruction, and Definition contained in the Interrogatories.

2. Nichicon objects to the scope of the Interrogatories' Definitions, Instructions, and Interrogatories to the extent they are vague, overbroad, ambiguous, or seek material which neither pertains to the allegations in this lawsuit nor is reasonably calculated to lead to the discovery of admissible evidence.

3. Nichicon objects to the scope of the Interrogatories to the extent that they violate the Court's order on October 29, 2014 staying discovery until April 15, 2015 by seeking discovery beyond the scope of the Court's January 14, 2015 Order. *See* ECF Nos. 309, 514.

4. Nichicon objects to the Interrogatories, including the Instructions and Definitions, to the extent that they seek information regarding conduct outside the applicable statute(s) of limitations, on the grounds that such information is neither relevant to any claims or defenses in this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

1           5.       Nichicon objects to the Interrogatories to the extent they are duplicative. Several  
2 Interrogatories seek information that is duplicative to Direct Purchaser Plaintiffs' and Indirect  
3 Purchaser Plaintiffs' First Requests for Production of Documents to All Defendants served on  
4 January 26, 2015.

5           6.       Nichicon objects to the Interrogatories' Definitions, Instructions, and Interrogatories to  
6 the extent they purport to impose burdens on Nichicon exceeding the scope of the Federal Rules of  
7 Civil Procedure, the Local Rules of Practice in Civil Proceedings before the United States District  
8 Court for the Northern District of California ("N.D. Cal. Local Rules"), the Standing Orders of the  
9 presiding judge, or other applicable domestic or foreign laws or rules, including but not limited to  
10 privacy laws, and/or what the parties have agreed to or will agree to with regards to an electronically  
11 stored information ("ESI") protocol, protective order, privilege agreement, and expert stipulation.

12           7.       Nichicon objects to the Interrogatories' Definitions, Instructions, and Interrogatories  
13 as unduly burdensome and oppressive to the extent that they purport to require Nichicon to search  
14 facilities and files and/or interview employees other than those facilities and files and/or employees  
15 that would reasonably be expected to have responsive information. Subject to its objections,  
16 Nichicon's responses will be based upon (1) a reasonable search of facilities and files that could  
17 reasonably be expected to possess responsive information, and (2) interviews of Nichicon employees  
18 and/or representatives who could reasonably be expected to possess responsive information.

19           8.       Nichicon objects to the Interrogatories to the extent they seek private, business,  
20 confidential, proprietary or commercially sensitive information. Any such information disclosed to  
21 Plaintiffs shall be pursuant to the Stipulated Protective Order entered on February 17, 2015 ("the  
22 Protective Order").

23           9.       Nichicon objects to the Interrogatories as premature to the extent that they seek  
24 information related to opinion testimony or to expert discovery.

25           10.       Nichicon objects to the Interrogatories insofar as they seek information regarding film  
26 capacitors and finished products and other products incorporating film capacitors, as Plaintiffs do not  
27 allege that Nichicon was the subject of any price-fixing conspiracy or other anticompetitive conduct  
28 relating to film capacitors.

1           11. Nichicon objects to the Interrogatories to the extent they seek information regarding  
2 products that were neither sold by Nichicon in the United States nor had the requisite effect on  
3 commerce or trade in the United States on the grounds that such Interrogatories are unduly  
4 burdensome and irrelevant to this action. Moreover, Nichicon objects to the Interrogatories to the  
5 extent they seek information regarding transactions not subject to the United States federal and state  
6 antitrust laws pursuant to the Foreign Trade Antitrust Improvement Act, 15 U.S.C. § 6a, including,  
7 but not limited to, data relating to sales to entities for incorporation into finished products because  
8 there is no claim of a conspiracy related to finished products.

9           12. Nichicon objects to the Interrogatories insofar as they purport to assume disputed facts  
10 or facts that are inaccurate, call for or assume legal conclusions, are argumentative, or are otherwise  
11 defective in form. Nichicon hereby denies any such disputed or inaccurate facts or legal conclusions  
12 that are or may be assumed by the Interrogatories, Definitions, or Instructions.

13           13. Nichicon objects to the Interrogatories to the extent they seek information in the  
14 possession, custody, or control of any entity other than Nichicon on the grounds that any such request  
15 is overbroad and unduly burdensome. Nichicon further objects to the Interrogatories to the extent  
16 that they request information in violation of a legal or contractual obligation of non-disclosure to a  
17 third party. Nichicon will not provide such information without the consent of the relevant third  
18 party or a court order compelling production.

19           14. Nichicon objects to the Interrogatories to the extent they seek disclosure of  
20 information protected from discovery by the attorney-client privilege, the work product doctrine, or  
21 any other applicable privilege or exemption (collectively, "privileged information"). Nichicon will  
22 not produce any privileged information. The production of any privileged information is  
23 unintentional, and Nichicon does not intend to waive any applicable privilege or objection through  
24 such production. Nichicon reserves the right to correct the record with regard to any such  
25 unintentional production.

26           15. Nichicon's decision to provide information notwithstanding the objectionable nature  
27 of any definition or instruction, or the Interrogatories themselves, should not be construed as: (a) an  
28 admission that the material is relevant; (b) a waiver of the General Responses and Objections or the

1 objections asserted in response to the specific Interrogatory; or (c) an agreement that requests for  
2 similar information will be treated in a similar manner. All information produced by Nichicon shall  
3 be governed under the terms of the Protective Order that has been entered by the Court and any  
4 subsequent amendments to the Protective Order. *See* ECF Nos. 554, 563.

5 16. Nichicon objects to the Interrogatories' Definitions, Instructions, and Interrogatories to  
6 the extent they purport to require Nichicon to provide information that is equally available to  
7 Plaintiffs, on the grounds that providing such information would be unduly burdensome. This  
8 objection applies, particularly, to information that is publicly available and/or information that is  
9 already in Plaintiffs' possession.

10 17. Nichicon objects to the Interrogatories' Definitions, Instructions, and Interrogatories to  
11 the extent they seek information that is not reasonably accessible by Nichicon because of undue  
12 burden or cost.

13 **OBJECTIONS TO DEFINITIONS**

14 18. Nichicon's responses herein, and its production of information and documents, do not  
15 in any way constitute an adoption of Plaintiffs' purported Definitions of words or phrases contained  
16 in the Interrogatories. Nichicon objects to the Definitions to the extent they: (i) are unclear,  
17 ambiguous, overly broad, or unduly burdensome; (ii) are inconsistent with the ordinary and  
18 customary meanings of the words or phrases they purport to define; (iii) seek to impose obligations  
19 different from, or in excess of, those created by the Federal Rules of Civil Procedure and Local  
20 Rules; and/or (iv) incorporate other purported Definitions that suffer from such defects. Without  
21 limiting the breadth and general application of these objections, Nichicon objects to the Definitions as  
22 follows:

23 19. Nichicon objects to the definition of the term "Capacitors" insofar as it seeks information  
24 regarding film capacitors and finished products and other products incorporating film capacitors.  
25 Plaintiffs do not allege that Nichicon was the subject of any price-fixing conspiracy or other  
26 anticompetitive conduct relating to film capacitors. Nichicon will define "Capacitors" as aluminum  
27 electrolytic capacitors and tantalum electrolytic capacitors only.

1           20.     Nichicon objects to the definition of the term "Describe" as vague, ambiguous, unduly  
2 burdensome, and overbroad.

3           21.     Nichicon objects to the definition of the term "Document(s)" as overbroad, vague, and  
4 ambiguous. Nichicon further objects to the definition of the term "Documents" to the extent that, by  
5 virtue of the definition, any request including this term imposes burdens on Nichicon exceeding the  
6 scope of the Federal Rules of Civil Procedure, the N.D. Cal. Local Rules, the Standing Orders of the  
7 presiding judge, or other applicable laws or rules and/or what the parties have agreed to or will agree  
8 to with regards to an ESI protocol, protective order, privilege agreement, and expert stipulation.

9           22.     Nichicon objects to the definition of the term "Electronically Stored Information" as  
10 overbroad, vague, and ambiguous. Nichicon further objects to the definition of the term  
11 "Electronically Stored Information" to the extent that, by virtue of the definition, any request  
12 including this term imposes burdens on Nichicon exceeding the scope of the Federal Rules of Civil  
13 Procedure, the N.D. Cal. Local Rules, the Standing Orders of the presiding judge, or other applicable  
14 laws or rules and/or what the parties have agreed to or will agree to with regards to an ESI protocol,  
15 protective order, privilege agreement, and expert stipulation.

16           23.     Nichicon objects to the definition of the term "Employee" as overbroad, vague,  
17 ambiguous, and unintelligible. Nichicon further objects to the definition of the term "Employee" to  
18 the extent that, by virtue of the definition, any request including this term seeks information protected  
19 by the privilege covering attorney-client communications and the work product doctrine. Nichicon  
20 also objects to the definition of the term "Employee" to the extent it purports to require Nichicon to  
21 locate or obtain information from any individual not presently in the employ of Nichicon. For  
22 purposes of responding to the Interrogatories, Nichicon will read the term "Employees" to be limited  
23 to the current officers, directors, or employees of Nichicon Corporation or Nichicon (America)  
24 Corporation.

25           24.     Nichicon objects that the purported definition of the term "Finished Products" is  
26 vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the  
27 discovery of admissible evidence.  
28

1           25. Nichicon objects to the definition of the term "Identify" as defined in Definitions 8  
2 through 10 as irrelevant, unduly burdensome, and overbroad. Nichicon further objects to the  
3 definition of the term "Identify" as defined in Definitions 8-10 as an interrogatory improperly posed  
4 in the form of a definition. Nichicon also objects to the definition of the term "Identify" to the extent  
5 that, by virtue of the definition, any request including this term is compound and includes several  
6 distinct subparts that should be the subject of separate interrogatories.

7           26. Nichicon objects to the definition of the term "Person" as overbroad, vague,  
8 ambiguous, and unintelligible. Nichicon further objects to the definition of the term "Person" to the  
9 extent that, by virtue of the definition, any request including this term seeks information protected by  
10 the privilege covering attorney-client communications and the work product doctrine, or is protected  
11 by a legal or contractual obligation of non-disclosure to a third party.

12           27. Nichicon objects to the definition of the terms "You" and "your" as overbroad and  
13 potentially encompassing entities whose information is not in Nichicon's possession, custody, or  
14 control. Nichicon further objects to the definition of the terms "You" and "your" to the extent that,  
15 by virtue of the definition, any request including those terms seeks information protected by the  
16 privilege covering attorney-client communications or the work product doctrine, or is protected by a  
17 legal or contractual obligation of non-disclosure to a third party. In its responses to the  
18 Interrogatories, Nichicon will interpret the definition of the terms "You" and "your" as being limited  
19 to Nichicon Corporation or Nichicon (America) Corporation with regards to their operations  
20 concerning ATF Capacitors only.

21                                   **OBJECTIONS TO INSTRUCTIONS**

22           28. Nichicon objects to the "Relevant Time Period" in Instruction No. 1 as rendering  
23 every specific request to which it purports to apply overbroad and unduly burdensome. Requiring  
24 Nichicon to produce information from a period extending "to the present" is unreasonably  
25 burdensome, not least because it does not account for the time required to collect, organize, and  
26 present such information. In its responses to the Interrogatories, Nichicon will interpret the "Relevant  
27 Time Period" applicable to the Interrogatories, unless indicated otherwise, as January 1, 2003 through  
28 December 31, 2011.



1           29.     Nichicon objects to the unlimited geographic scope of the Interrogatories as rendering  
2 every specific Interrogatory to which it purports to apply overbroad and unduly burdensome. The use  
3 of an unlimited geographic scope would permit Plaintiffs to indiscriminately request that Nichicon  
4 provide information relating to every state, country, and region in which Nichicon operates with no  
5 justification for imposing such a burden or explanation of why such a request cannot be more  
6 narrowly drafted.

7           30.     Nichicon objects to Instruction No. 3 to the extent that it imposes obligations beyond  
8 what is required under Rule 33(d) of the Federal Rules of Civil Procedure. Nichicon reserves all of  
9 its rights under Rule 33(d) to amend and supplement its responses to the Interrogatories using  
10 information from its business records.

11           31.     Nichicon objects to Instruction No. 8 as an Interrogatory improperly posed in the form  
12 of an instruction. Nichicon also objects to Instruction No. 8 to the extent that it imposes obligations  
13 beyond what is required under Rule 33 of the Federal Rules of Civil Procedure.

14                               \*\*\*\*\*

15           32.     The Objections and Responses below shall not be construed as an admission of or  
16 agreement with any implication, statement, characterization or conclusions implied or stated in any  
17 definition, instruction, or Interrogatory. The fact that Nichicon may answer part or all of any  
18 Interrogatory is not intended to be, and shall not construed to be, a waiver by Nichicon of any part of  
19 any objection to the Interrogatory.

20           33.     Nichicon reserves the right to assert additional general and specific objections to the  
21 production of information and/or documents as appropriate and to supplement these objections and  
22 responses. Nichicon also reserves the right to assert additional general and specific objections arising  
23 from matters discovered during the course of the litigation.

24           34.     Nichicon adopts and incorporates by reference, to the extent applicable, any and all  
25 objections, specific or general, asserted by any other Defendant in its responses to these  
26 Interrogatories.

1           35.     The General Objections, Objections to Definitions, and Objections to Instructions are  
2 incorporated by reference into each and every specific objection and response below. The fact that an  
3 answer is given or a document is provided does not waive any general or specific objection.

#### 4                               **SPECIFIC RESPONSES AND OBJECTIONS**

5           In addition to the foregoing General Responses and Objections, set forth below are Nichicon's  
6 responses and further objections to each individual Interrogatory set forth in the Interrogatories. Each  
7 General Response and Objection is incorporated into each of the responses to the individual  
8 Interrogatory. Without waiving any of the foregoing General Responses and Objections, Nichicon  
9 responds as follows:

#### 10                               **I.     INTERROGATORIES**

##### 11                               **INTERROGATORY NO. 1:**

12                 Identify all United States purchasers of Your Capacitors.

##### 13                               **RESPONSE:**

14                 In addition to and without waiving its General Responses and Objections, Nichicon objects to  
15 this Interrogatory on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and  
16 seeks information not reasonably calculated to lead to the discovery of admissible evidence. Nichicon  
17 specifically objects to the term "United States purchasers" as vague, ambiguous, overly broad, and  
18 undefined. Further, Nichicon objects to this Interrogatory to the extent that it seeks information  
19 concerning events outside the Relevant Time Period, as that term is interpreted above, on the grounds  
20 that it seeks information that is neither relevant to any claims or defenses in this litigation nor  
21 reasonably calculated to lead to the discovery of admissible evidence. Nichicon also objects to this  
22 Interrogatory to the extent it is duplicative with the Direct Purchaser Plaintiffs' and Indirect  
23 Purchaser Plaintiffs' First Requests for Production of Documents to All Defendants. Nichicon objects  
24 to this Interrogatory pursuant to Rule 26(b)(2)(C)(i) of the Federal Rules of Civil Procedure, insofar  
25 as it calls for information that can be obtained from other sources that are more convenient, less  
26 burdensome, or less expensive, including documents previously provided to Plaintiffs or produced in  
27 response to Direct Purchaser Plaintiffs' and Indirect Purchaser Plaintiffs' First Requests for  
28 Production of Documents to All Defendants. In addition, Nichicon objects to this Interrogatory to the



1 extent it seeks information that is outside the scope of the discovery permitted under the stay of  
2 discovery ordered by the court, as modified. *See* ECF Nos. 309, 514.

3 Subject to and without waiving its objections, Nichicon responds that information relating to  
4 purchasers of Nichicon's Capacitors may be derived from an inspection of transaction data that will  
5 be produced by Nichicon in response to Request No. 23 of Direct Purchaser Plaintiffs' and Indirect  
6 Purchaser Plaintiffs' First Requests for Production of Documents to All Defendants served on  
7 January 26, 2015.

8 **INTERROGATORY NO. 2:**

9 Identify all companies, entities, or subsidiaries that purchase Your Capacitors for  
10 incorporation into a Finished Product that is sold in the United States.

11 **RESPONSE:**

12 In addition to and without waiving its General Responses and Objections, Nichicon objects to  
13 this Interrogatory on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and  
14 seeks information not reasonably calculated to lead to the discovery of admissible evidence. Further,  
15 Nichicon objects to this Interrogatory to the extent that it seeks information concerning events outside  
16 the Relevant Time Period, as that term is interpreted above, on the grounds that it seeks information  
17 that is neither relevant to any claims or defenses in this litigation nor reasonably calculated to lead to  
18 the discovery of admissible evidence. Additionally, Nichicon objects to this Interrogatory insofar as it  
19 seeks information not currently in Nichicon's possession, custody or control. Nichicon additionally  
20 objects to this Request as overly broad, unduly burdensome, and not reasonably calculated to lead to  
21 the discovery of admissible evidence insofar as it seeks documents concerning Finished Products  
22 incorporating Capacitors, which Plaintiffs do not allege were the subject of any price-fixing  
23 conspiracy or other anticompetitive conduct. Nichicon also objects to this Interrogatory to the extent  
24 it seeks information that is outside the scope of the discovery permitted under the stay of discovery  
25 ordered by the court, as modified. *See* ECF Nos. 309, 514.

26 **INTERROGATORY NO. 3:**

27 Identify all deliveries in the United States of Your Capacitors.

28 **RESPONSE:**

1 In addition to and without waiving its General Responses and Objections, Nichicon objects to  
 2 this Interrogatory on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and  
 3 seeks information not reasonably calculated to lead to the discovery of admissible evidence. Further,  
 4 Nichicon objects to this Interrogatory to the extent that it seeks information concerning events outside  
 5 the Relevant Time Period, as that term is interpreted above, on the grounds that it seeks information  
 6 that is neither relevant to any claims or defenses in this litigation nor reasonably calculated to lead to  
 7 the discovery of admissible evidence. Nichicon also objects to this Interrogatory to the extent it is  
 8 duplicative with the Direct Purchaser Plaintiffs' and Indirect Purchaser Plaintiffs' First Requests for  
 9 Production of Documents to All Defendants. Nichicon objects to this Interrogatory pursuant to Rule  
 10 26(b)(2)(C)(i) of the Federal Rules of Civil Procedure, insofar as it calls for information that can be  
 11 obtained from other sources that are more convenient, less burdensome, or less expensive, including  
 12 documents previously provided to Plaintiffs or produced in response to Direct Purchaser Plaintiffs'  
 13 and Indirect Purchaser Plaintiffs' First Requests for Production of Documents to All Defendants. In  
 14 addition, Nichicon objects to this Interrogatory to the extent it seeks information that is outside the  
 15 scope of the discovery permitted under the stay of discovery ordered by the court, as modified. *See*  
 16 ECF Nos. 309, 514.

17 Subject to and without waiving its objections, Nichicon responds that Nichicon Corporation  
 18 delivers capacitors outside of the United States. Nichicon (America) Corporation delivers Capacitors  
 19 in the United States. Nichicon further states that information relating to Nichicon's deliveries of  
 20 Capacitors may be derived from an inspection of transaction data that will be produced by Nichicon  
 21 in response to Request No. 23 of Direct Purchaser Plaintiffs' and Indirect Purchaser Plaintiffs' First  
 22 Requests for Production of Documents to All Defendants served on January 26, 2015.

23 **INTERROGATORY NO. 4:**

24 Identify all deliveries in the United States of Finished Products incorporating Capacitors that  
 25 You manufactured.

26 **RESPONSE:**

27 Nichicon understands that Plaintiffs have withdrawn this Interrogatory.

28 **INTERROGATORY NO. 5:**

1 Identify all direct and indirect chains of distribution into or involving the United States for  
 2 Capacitors that You manufactured. For purposes of identifying indirect chains of distribution into the  
 3 United States, identify all known chains of distributions for your Capacitors sold to foreign  
 4 distributors that resell Capacitors to customers in the United States. Please also identify all known  
 5 indirect chains of distribution where Your Capacitors are purchased by a foreign company, entity, or  
 6 subsidiary that incorporates the Capacitor into a Finished Product that is ultimately sold in the United  
 7 States.

8 **RESPONSE:**

9 Nichicon understands that Plaintiffs have withdrawn the third sentence of this Interrogatory.  
 10 Nichicon's Response is limited to the first two sentences of this Interrogatory. In addition to and  
 11 without waiving its General Responses and Objections, Nichicon objects to this Interrogatory on the  
 12 grounds that it is overly broad, unduly burdensome, vague, ambiguous, and seeks information not  
 13 reasonably calculated to lead to the discovery of admissible evidence. Nichicon specifically objects to  
 14 the phrase "chains of distribution" as vague, ambiguous, overly broad, and undefined. Further,  
 15 Nichicon objects to this Interrogatory to the extent that it seeks information concerning events outside  
 16 the Relevant Time Period, as that term is interpreted above, on the grounds that it seeks information  
 17 that is neither relevant to any claims or defenses in this litigation nor reasonably calculated to lead to  
 18 the discovery of admissible evidence. Additionally, Nichicon objects to this Interrogatory insofar as it  
 19 seeks information not currently in Nichicon's possession, custody or control. In addition, Nichicon  
 20 objects to this Interrogatory to the extent it seeks information that is outside the scope of the  
 21 discovery permitted under the stay of discovery ordered by the court, as modified. *See* ECF Nos. 309,  
 22 514.

23 Subject to and without waiving its objections, Nichicon responds that Nichicon Corporation's  
 24 chain of distribution involving sales of Capacitors into the United States is through its sales to  
 25 Nichicon (America) Corporation, which takes title to the Capacitors outside of the United States.  
 26 Nichicon (America) Corporation then sells those Capacitors in the United States, among other places.  
 27 Further, Nichicon responds that at this time it lacks knowledge or information to identify any indirect  
 28 chains of distribution into the United States. Nichicon (America) Corporation does not manufacture

1 Capacitors. Nichicon maintains the right to produce additional documents sufficient to show chains  
 2 of distribution for Capacitors manufactured by Nichicon during the Relevant Time Period, if any, as  
 3 additional information is discovered.

4 **INTERROGATORY NO. 6:**

5 Identify all product specifications that You are required to meet for sales of Your Capacitors to  
 6 foreign companies, entities, or subsidiaries that incorporate Your Capacitors into Finished Products  
 7 that are sold in the United States.

8 **RESPONSE:**

9 Nichicon understands that Plaintiffs have withdrawn this Interrogatory.

10 **INTERROGATORY NO. 7:**

11 Identify and Describe any studies, analyses or examination of the Finished Products market(s)  
 12 in the United States, including, but not limited to, studies or analyses relating to the correlation  
 13 between the prices for Your Capacitors sold to foreign companies, entities, or subsidiaries and the  
 14 prices of Finished Products incorporating Capacitors sold in the United States.

15 **RESPONSE:**

16 In addition to and without waiving its General Responses and Objections, Nichicon objects to  
 17 this Interrogatory on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and  
 18 seeks information not reasonably calculated to lead to the discovery of admissible evidence. Nichicon  
 19 specifically objects to the terms “studies,” “analyses,” “examination” and “Finished Product  
 20 market(s)” as vague, ambiguous, overly broad, and undefined. Further, Nichicon objects to this  
 21 Interrogatory to the extent that it seeks information concerning events outside the Relevant Time  
 22 Period, as that term is interpreted above, on the grounds that it seeks information that is neither  
 23 relevant to any claims or defenses in this litigation nor reasonably calculated to lead to the discovery  
 24 of admissible evidence. Nichicon further objects to this Request as overly broad, unduly burdensome,  
 25 and not reasonably calculated to lead to the discovery of admissible evidence insofar as it seeks  
 26 documents concerning Finished Products incorporating Capacitors, which Plaintiffs do not allege  
 27 were the subject of any price-fixing conspiracy or other anticompetitive conduct. Additionally,  
 28 Nichicon objects to this Interrogatory insofar as it seeks information not currently in Nichicon’s

possession, custody or control Nichicon also objects to this Interrogatory to the extent it seeks information that is outside the scope of the discovery permitted under the stay of discovery ordered by the court, as modified. *See* ECF Nos. 309, 514.

**INTERROGATORY NO. 8:**

Identify and Describe any agreements You have for the sale of Your Capacitors with a foreign company, entity, or subsidiary that incorporates Your Capacitors into Finished Products that are sold in the United States.

**RESPONSE:**

Nichicon understands that Plaintiffs have withdrawn this Interrogatory.

**INTERROGATORY NO. 9:**

Identify the percentage of Your Capacitors that are:

(a) directly imported into the United States;

(b) directly purchased by persons, businesses, or other entities in the United States;

(c) sold to United States' distributors that resell the Capacitors to purchasers in the United States;

(d) sold to foreign distributors that resell the Capacitors to purchasers in the United States;

(e) sold to foreign companies, entities or subsidiaries that incorporate the Capacitors into a Finished Product for sale in the United States.

**RESPONSE:**

Nichicon understands that Plaintiffs have withdrawn subparagraph (e) of this Interrogatory.

Nichicon's Response relates to subparagraphs (a) through (d). In addition to and without waiving its General Responses and Objections, Nichicon objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and seeks information not reasonably calculated to lead to the discovery of admissible evidence. Further, Nichicon objects to this Interrogatory to the extent that it seeks information concerning events outside the Relevant Time Period, as that term is interpreted above, on the grounds that it seeks information that is neither relevant to any claims or defenses in this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Nichicon objects to this Interrogatory pursuant to Rule 26(b)(2)(C)(i) of the

1 Federal Rules of Civil Procedure, insofar as it calls for information that can be obtained from other  
 2 sources that are more convenient, less burdensome, or less expensive, including documents  
 3 previously provided to Plaintiffs or produced in response to Direct Purchaser Plaintiffs' and Indirect  
 4 Purchaser Plaintiffs' First Requests for Production of Documents to All Defendants. Additionally,  
 5 Nichicon objects to this Interrogatory insofar as it seeks information not currently in Nichicon's  
 6 possession, custody or control. In addition, Nichicon objects to this Interrogatory to the extent it  
 7 seeks information that is outside the scope of the discovery permitted under the stay of discovery  
 8 ordered by the court, as modified. *See* ECF Nos. 309, 514

9 Subject to and without waiving its objections, Nichicon responds that information responsive  
 10 to subparts (a) and (b) above may be derived from an inspection of transaction data that will be  
 11 produced by Nichicon in response to Request No. 23 of Direct Purchaser Plaintiffs' and Indirect  
 12 Purchaser Plaintiffs' First Requests for Production of Documents to All Defendants served on  
 13 January 26, 2015. Nichicon responds that it does not have sufficient information to answer subparts  
 14 (c) and (d) of this Interrogatory because Nichicon does not have in its possession information  
 15 sufficient to determine the requested percentages.

16 **INTERROGATORY NO. 10:**

17 If You contend that the FTAIA applies to bar damages for state law antitrust claims, state all  
 18 facts and legal theories that support Your contention.

19 **RESPONSE:**

20 In addition to and without waiving its General Responses and Objections, Nichicon objects to  
 21 this Interrogatory to the extent that it seeks information concerning events outside the Relevant Time  
 22 Period, as that term is interpreted above, on the grounds that it seeks information that is neither  
 23 relevant to any claims or defenses in this litigation nor reasonably calculated to lead to the discovery  
 24 of admissible evidence. Nichicon objects to this Interrogatory on the grounds that it is a premature  
 25 contention interrogatory. Such a contention interrogatory, if proper at all, should await the  
 26 substantial completion of discovery. Fed. R. Civ. P. 33(a)(2); *HTC Corp. v. Technology Properties*  
 27 *Ltd.*, No. C08-00882 JF (HRL), 2011 WL 97787 at \*1-2 (N.D. Cal. Jan. 21, 2011); *In re Convergent*  
 28 *Technologies Securities Litigation*, 108 F.R.D. 328 (N.D. Cal. 1985). Moreover, this contention



interrogatory seeks Nichicon's legal theories at a time when the parties are in the process of preparing motions and responses thereto on the very subject matter to which this Interrogatory is directed. Plaintiffs will receive Nichicon's legal theories on the subject matter to which this Interrogatory is directed at the time Nichicon's briefing is filed. Nichicon also objects to this Interrogatory on the grounds that it impermissibly seeks to shift to Nichicon the burden that Plaintiffs bear to prove their own claims. Additionally, Nichicon objects to this Interrogatory to the extent it calls for a legal conclusion, seeks Nichicon's "legal theories," or seeks any other information protected by any applicable privilege, including without limitation: attorney-client privilege, the work-product doctrine, the joint defense privilege, the common interest privilege, and/or any other applicable privilege or doctrine. Nichicon objects to this Interrogatory to the extent it seeks information that is the subject of expert opinion. Nichicon will disclose such information only at the appropriate time pursuant to the Court's schedule or agreement of the parties.

**INTERROGATORY NO. 11:**

If Your response to any of Direct and Indirect Purchaser Plaintiffs' Requests for Admissions Nos. 1 through 9 is anything except an unqualified admission, state all bases and reasons for Your response.

**RESPONSE:**

Nichicon understands that Plaintiffs have withdrawn the portions of this Interrogatory relating to Indirect Purchaser Plaintiffs' Requests for Admissions Nos. 2, 3, and 9. Nichicon's Response is limited to Requests for Admissions Nos. 1 and 4 through 8. In addition to and without waiving its General Responses and Objections, Nichicon objects to Interrogatory No. 11 on the grounds that it is overbroad and unduly burdensome. Nichicon further objects to this Interrogatory to the extent it seeks privileged information, including without limitation information subject to the attorney-client privilege, common-interest privilege, work-product doctrine, joint defense privilege, and/or any other privilege or immunity. Further, Nichicon objects to this Interrogatory on the grounds that it is duplicative of information sought through other means, including information provided in Nichicon's responses to Direct and Indirect Purchaser Plaintiffs' Requests for Admissions.

1 Subject to and with out waiver of the foregoing specific and general objections, Nichicon  
2 responds that information relating to Nichicon's bases and reasons for responding to any of the Direct  
3 and Indirect Purchaser Plaintiffs' Requests for Admissions in any way except an unqualified  
4 admission may be derived from an inspection of Nichicon's responses to the Direct and Indirect  
5 Purchaser Plaintiffs' Requests for Admissions.

6  
7  
8 DATED: March 30, 2015

9 **VERIFICATION TO FOLLOW**

10 By: /s/ Scott M. Mendel  
11 Scott M. Mendel (*pro hac vice*)  
12 Steven M. Kowal (*pro hac vice*)  
13 Michael E. Martinez (*pro hac vice*)  
14 Lauren N. Norris (*pro hac vice*)  
15 Lauren B. Salins (*pro hac vice*)  
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20  
21 Facsimile: (312) 827-8000  
22 *Counsel for Defendants*

23  
24 *Nichicon Corporation*  
25 *Nichicon (America) Corporation*  
26  
27  
28



**CERTIFICATE OF SERVICE**

I am employed in Cook County in the City of Chicago. I am over the age of eighteen and not a party to the within action. My business address is 70 West Madison Street, Suite 3100, Chicago, IL 60602.

On March 30, 2015, I served a copy of the below-listed document described as:

**RESPONSE OF NICHICON CORPORATION AND NICHICON (AMERICA) CORPORATION TO INDIRECT PURCHASER PLAINTIFFS' FIRST SET OF INTERROGATORIES**

BY EMAIL: I caused the document(s) to be served electronically on the persons at the electronic notification addresses listed below.

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*Also served via email on counsel for all Defendants*

I certify under penalty of perjury that the foregoing is true and correct.

Dated: March 30, 2015

By: /s/ Scott M. Mendel  
Scott M. Mendel